

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-----------------------------------|---|-----------------|
| HANS W. KALLENBERGER |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| v. |) | CASE NO. 96-479 |
| |) | |
| HENRY COUNTY WATER DISTRICT NO. 2 |) | |
| |) | |
| DEFENDANT |) | |

ORDER

On October 8, 1996, Hans W. Kallenberger ("Kallenberger") filed a complaint against Henry County Water District #2 ("Henry Water") which alleges that Henry Water had installed a submeter on Kallenberger's service line in order to serve an adjoining property owner, and that Henry Water had no easement or right-of-way over Kallenberger to serve that adjoining property. The complaint requested the removal of the submeter; cut off of service to the adjoining property; reimbursement of unpaid water use; line use compensation and Kallenberger's cost. On October 15, 1996, the Commission ordered Henry Water to satisfy or answer the allegations contained in the complaint. On October 25, 1996, Henry Water filed its answer in which it stated that it did install a minor meter to service adjacent property, and that it did so pursuant to "permission." Filed with the Answer as Exhibit "A" of Henry Water was a letter dated March 5, 1991 between Henry Water and an attorney representing one of the property owners, concerning the metering of water between two properties to be divided from the

original tract. The two tracts thus created were to be served by Henry Water under an agreement drafted by that attorney and agreed to by Henry Water.¹

Under the terms of the agreement, Henry Water was to "structure the service, metering and billing" as set out in the agreement. The evidence shows that Henry Water set a meter on the second tract (now Dwenger) using the customer service line of the original tract (now Kallenberger), some 50 to 100 feet off the property line² and billed Dwenger by subtracting his usage from that of Kallenberger. Needless to say this "arrangement" as to billing has resulted in problems for all parties.

Henry Water has admitted that it has no easement over the Kallenberger property and that the present connection was done "as a convenience" to the former property owner to avoid laying approximately 800 feet of line.³

Also filed in the record as Exhibit "D" and "E" are copies of Orders by the Henry Circuit Court in a civil action filed by Kallenberger (Black Forest Riding Academy) against Dwenger (Santa Cruz Cattle Co.), parties to the present case before the Commission. The Orders of the Henry Circuit Court indicate that there is an Agreed Order and injunction in place, which requires that service not be terminated until the circuit court enters a ruling on the issues.

The complaint has also raised the issue of water usage, but it is apparent that the claim is for water billed in error. Kallenberger claims he was wrongly billed for about

¹ Exhibit "A" - A signed copy that was filed on April 14, 1997 by Henry Water in response to the Commission's Order of March 12, 1997.

² Transcript of Evidence at 89.

³ Henry Water's response to the information Order filed March 28, 1997 at 5a.

\$2,000.00. Henry Water billing records show that the error is much less and calculate the figure at \$47.65.

The Commission finds that the billing records presented by Henry Water are the only evidence of water usage and billing, and the Commission will accept them as correct for the purpose of determining the amount in dispute.

The Commission has no jurisdiction to determine a real property dispute as it applies to any determination of an easement or ownership of any waterline between Kallenberger (Black Forest Riding Academy) and Dwenger (Santa Cruz Cattle Co.).

The Commission does have the jurisdiction to determine what are just, reasonable and adequate practices, service, and methods that a utility shall employ, and to fix the same by its order. KRS 278.280. The Commission finds that Henry Water has failed to follow the provisions of its filed tariff and is in violation of 807 KAR 5:066 by using the service line of a customer as its service connector. The Commission further finds that Henry Water failed to obtain Commission approval of the special contract as required by 807 KAR 5:011, Section 13. Henry Water also violated 807 KAR 5:006, Section 5, when it failed to obtain an easement for the extension of service. The Commission finds that Henry Water is in violation of KRS Chapter 278 and regulations thereunder and should be assessed civil penalties under KRS 278.990(1).

IT IS THEREFORE ORDERED that:

1. Henry Water is assessed a penalty of \$500 for violation of KRS 278.160 for its failure to follow its filed tariff and for violation of 807 KAR 5:011, Section 13, not seeking prior approval of a special contract.

2. Henry Water is assessed a penalty of \$500 for violation of 807 KAR 5:006, Section 5, for its failure to obtain an easement for extension of service and for violation of 807 KAR 5:066, Section 12(1), failure to connect the customer's service line to its main.

3. Within 20 days of the date of this Order, Henry Water shall pay to the Commonwealth of Kentucky the sum of \$1,000. This payment shall be in the form of cashier's or certified check made payable to "Kentucky State Treasurer" and shall be mailed or delivered to: Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

4. Henry Water shall serve the property of Dwenger (Santa Cruz Cattle Co.) in compliance with all applicable laws and regulations. Henry Water shall upon the determination of Henry Circuit Court as to the existence or non-existence of an easement upon the land of Kallenberger (Black Forest Riding Academy) do the following:

a. If an easement for utility service is found to exist by Henry Circuit Court, Henry Water shall install a new service connector line from its main to the property line and meter of Dwenger (Santa Cruz Cattle Co.).

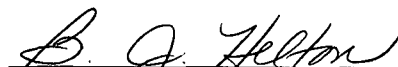
b. If no easement for utility service is determined to exist by Henry Circuit Court, Henry Water shall extend service to Dwenger (Santa Cruz Cattle Co.) as set out in 807 KAR 5:066, Section 11.


5. Henry Water shall refund to Kallenberger (Black Forest Riding Academy) the sum of \$47.65 as a credit for billing error.

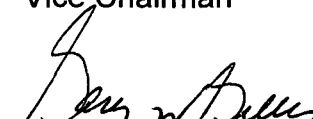
6. Henry Water shall read each meter involved on the same day as close in time as practicable for each billing cycle until such time as a separate service line is installed.

Done at Frankfort, Kentucky, this 4th day of August, 1998.

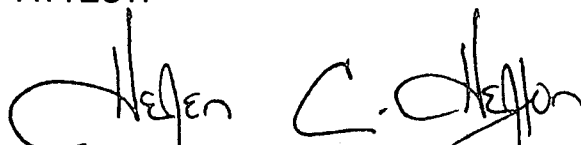
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director